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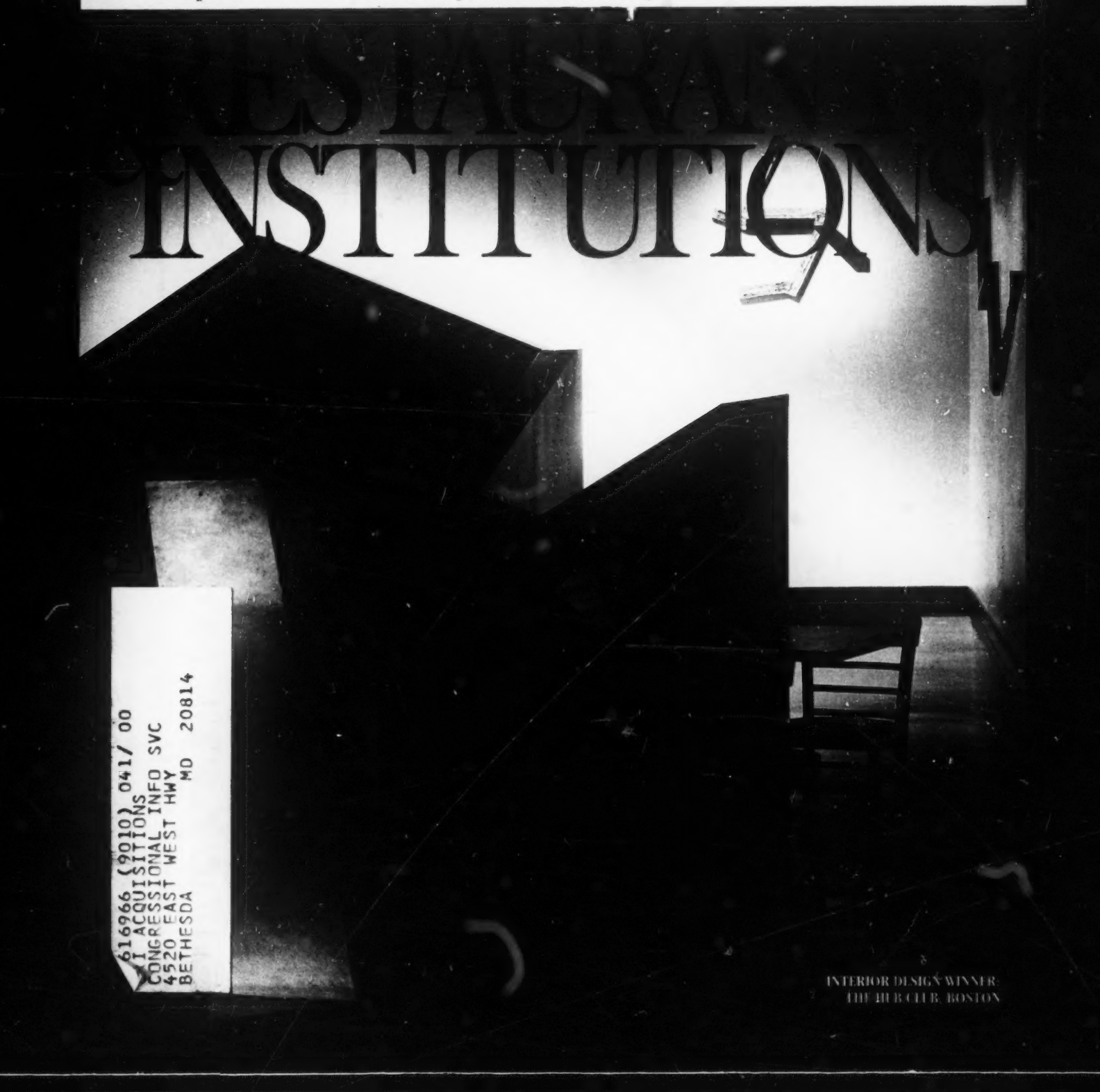
SEPTEMBER 18, 1989

A Cahners publication serving the total foodservice industry



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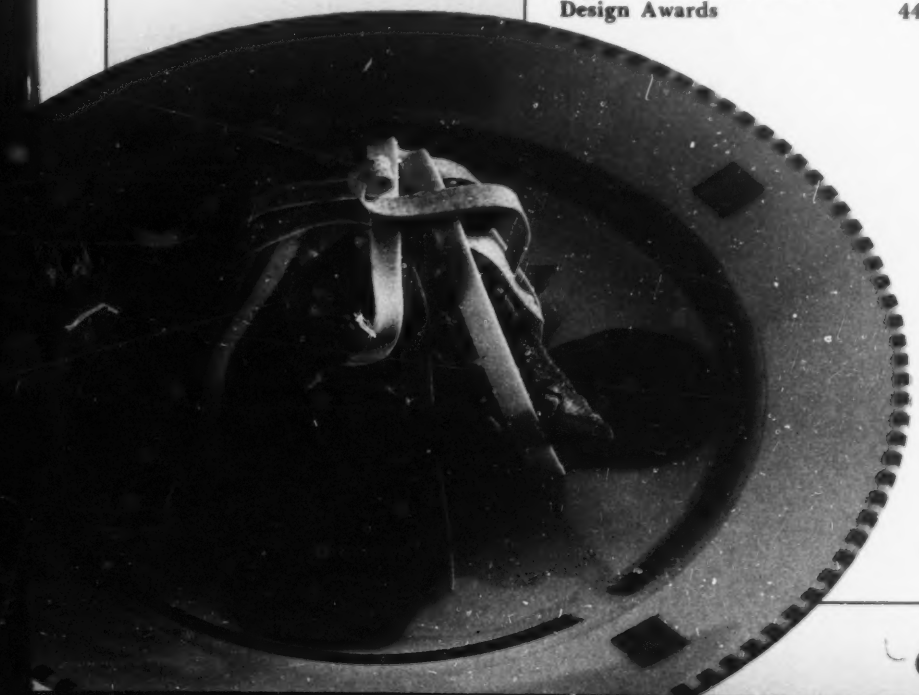

(L.) Sweet and spicy dessert from The Rattlesnake Club, Denver.

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R&I FORUM

TAKE NOTE

In the Aug. 7 *R&I* Exclusive, "The Inside Story on Executive Pay," commercial and institutional average-raise figures on p. 52 were transposed. The correct data follows:

Avg. Raise	Comm.	Inst.
1%-5%	34.1%	63.6%
6%-10%	27.6	24.7
11%-15%	7.3	3.6
16%+	9.8	2.0
No raise	18.7	5.7
Pay cut	2.5	0.4

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■ **READER'S COMMENTS**

Avoid Workplace Liability

Every foodservice operator knows that mistakes in labor and employment matters can be costly. Damages paid to employees, lost management time, attorneys' fees and low employee morale too often are the result of avoidable errors.

Consider these suggestions for protecting your business:

1. Check your documents. In many states, discharged employees can recover thousands of dollars if they can establish they were wrongfully discharged. References in employment documents to "permanent" employment and all guarantees that employees will only be dismissed for "good cause" or "just cause" should be eliminated.

2. Preserve employees' at-will status. In California and other states, employers can insulate themselves from some wrongful discharge suits by inserting protective language in employment applications and other employment documents. All employees should acknowledge, in writing, that they can be discharged at any time, for any reason, with or without cause.

3. Stay off the testing band wagon, but address workplace substance abuse. The legal dos and don'ts of drug testing in the workplace still are being sorted out in the courts. Employers should resist the temptation to adopt on-the-job drug testing simply because it has become fashionable. It is far better to let someone else use his nickel to litigate drug-testing issues.

Many restaurateurs find their policies inadequate to the purpose of disciplining employees for workplace use or distribution of alcohol or drugs. Employers should adopt strong, specific policies addressing these issues, including a provision that violation is grounds for discipline, including immediate termination.

Prudent employers also will acquaint themselves with applicable state law. In California, for example, private employers with more than 25 employees are required to reasonably accommodate any employee who wishes to voluntarily enter and participate in an alcohol- or drug-rehabilitation program.

4. Take the I-9 seriously. The Immigration and Naturalization Service is handing out hefty fines to employers who fail to dot all the i's and cross all the t's on the I-9 form. Because employers are chosen for audit by random selection of taxpayer I.D. numbers, no one in the foodservice industry is safe unless in full compliance.

5. Outlaw Sexual Harassment. Sexual harassment is the most heavily litigated area of employment discrimination.

Every employer should adopt a policy specifically prohibiting sexual harassment. Provision should be made for the aggrieved employee to complain to someone other than his or her immediate supervisor.

Just declaring sexual harassment unacceptable is not enough. Complaints must be promptly investigated. Employees must understand that sexual gestures, jokes, sexually suggestive pictures or cartoons, blocking, bumping and a host of other unwelcome conduct might create a "hostile environment."

Sexual harassment is serious business. When a supervisor or manager has engaged in harassment, the employer can be held strictly liable. And in many states, if employers are aware of harassment, but fail to act to eliminate it, they can be held *individually* liable.

6. Abandon Polygraphs. The federal Employee Polygraph Protection Act of 1988 prohibits most private employers from using polygraphs for pre-employment screening, or during the course of employment. The restrictions in this new statute are so stringent, and the penalties for violation so severe, that no employer should use polygraph exams in the workplace without the benefit of counsel from an attorney familiar with the intricacies of the statute.

By following these suggestions, restaurant operators can avoid or limit liability for potential labor and employment law violations.

R. Craig Scott, Sheppard, Mullin, Richter & Hampton (a law firm), Newport Beach, Calif.

ATTENTION, OPERATORS: *R&I* Forum represents the views of its contributors, but not necessarily those of the magazine. We welcome your comments and responses. Address letters to: The Editor, *Restaurants & Institutions*, 1350 E. Touhy Ave., Des Plaines, Ill. 60018.

ACTION EXPRESS

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